IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1848 of 1995

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA

HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEW INDIA INSURANCE COMPANY LIMITED - Appellant(s)
Versus
TARABEN WD/O GAGABHAI PATNI & 4 - Defendant(s)

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Appearance :

MR JD AJMERA for Appellant(s) : 1,
MR MP SHAH for Defendant(s) : 1 - 4.
MS. KRUTI M SHAH for Defendant(s) : 1 - 4.
NOTICE SERVED for Defendant(s) : 5 - 6.

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 01/12/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

1. This appeal is arising out of the impugned judgment and award dated 8.11.1993 passed by the Motor Accident Claims Tribunal (Auxi.), District Banaskantha at Palanpur, in Motor Accident Claims Petition No. 213/1987, filed by the respondents – claimants, whereby, the learned Tribunal partly allowed the said claim petition and awarded Rs. 1,85,000/- with interest at the rate of 12% per annum from the date of the petition till realisation with proportionate costs from all the opponents jointly and severally.

2. Shri Ajmera for the appellant – Insurance Company vehemently submitted that the learned Tribunal committed grave error in applying multiplier of 20 years. He submitted that, at the most, 15 years multiplier should have been applied by the learned Tribunal. It is true that multiplier applied in this case is slightly on higher side. However, looking to the age of the deceased, who died at the young age of 26 years, and considering the fact that the learned Tribunal without considering future rise in income of the deceased assessed loss of dependency only at Rs. 8,000/- per year. We are of the considered opinion that no interference is required in this appeal because, in our considered opinion, the learned Tribunal should have taken figure of Rs. 12,000/- at least towards the loss of dependency and multiplier of 15 years, whereas, in fact, the learned Tribunal

has awarded only Rs. 1,60,000/- towards the head of loss of future income. In that view of the matter, we would not like to interfere with the award passed by the learned Tribunal.

3. Before parting, we must state that one more ground is raised by Shri Ajmera for the appellant – Insurance Company. He submitted that there was a limited liability of Rs. 50,000/- only, therefore, learned Tribunal could not have awarded more than Rs. 50,000/- against the appellant – Insurance Company. It is a different matter that such a contention was raised in the written statement. The fact remains that framing of the issue it was not pointed out to the learned Tribunal by the learned Counsel for the appellant – Insurance Company, in fact, at the time of arguments also, this point was never pressed into service. If, according to the Insurance Company, its liability is limited, it is always open for the Insurance Company to recover the amount from the owner of the vehicle.

4. With this observation, this appeal is dismissed.

(B. J. SHETHNA, J.)

(H.B. ANTANI, J.)

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